

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BIENVENIDO FRANCO, WILLIAM FRASER,
BRIAN McCABE, on behalf of themselves
and all others similarly situated,

Plaintiffs,

MEMORANDUM & ORDER
07-CV-3956 (JS) (AKT)

-against-

IDEAL MORTGAGE BANKERS, LTD. d/b/a
LEND AMERICA, INC., MICHAEL ASHLEY,
TIMOTHY MAYETTE, HELENE DECILLIS,
MICHAEL PRIMEAU,

Defendants.

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APPEARANCES

For Plaintiffs: Erik Harald Langeland, Esq.
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For Defendants:

Ideal Mortgage Bankers,
Ltd. d/b/a Lend America No appearances.

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SEYBERT, District Judge:

Pending before the Court is Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R"), issued on July 29, 2011. For the following reasons, the Court ADOPTS this R&R in its entirety.

BACKGROUND

Plaintiffs brought this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., on behalf of themselves and all other current and former employees of Lend America, Inc. who worked as loan officers during the applicable limitations period, to recover unpaid wages from Ideal Mortgage Bankers, Ltd. d/b/a Lend America, Inc. ("Lend America"), and Lend America officers Michael Ashley, Timothy Mayette,¹ Helene DeCillis and Michael Primeau.

Lend America answered Plaintiffs' Complaint, First Amended Complaint, and Second Amended Complaint, asserting various defenses to Plaintiffs' claims. In December 2009, Lend America's attorneys moved to withdraw as counsel, and the Court granted that motion in January 2010 (Docket No. 177). One week later, Plaintiffs moved for a default judgment against Lend

¹ All claims against Defendant Mayette were dismissed with prejudice on August 5, 2011. (Docket No. 228.)

America, arguing that a default was warranted because Lend America was no longer represented by counsel and a corporation cannot appear pro se. (Docket No. 179.) The Court referred this motion to Magistrate Judge Tomlinson. (Docket No. 180.)

On August 23, 2010, Judge Tomlinson issued an R&R recommending that Plaintiffs' motion be denied but that an order be issued directing Lend America to retain counsel by a certain date. (Docket No. 216.) This Court adopted Judge Tomlinson's R&R in its entirety and ordered Lend America to retain counsel by October 15, 2010. (Docket No. 217.)

Lend America failed to retain counsel by October 15, 2010, so on October 29, 2010, Plaintiffs again moved for default judgment. (Docket No. 222.) The motion was referred to Judge Tomlinson on November 2, 2010. (Docket No. 223.) Prior to issuing her R&R, Plaintiffs informed the Court that "Ideal Mortgage Bankers, Ltd. is the subject of an involuntary bankruptcy action," and that they "will not continue to pursue the litigation against it at this time" because the bankruptcy action operates as a stay. (Docket No. 225.)

On July 29, 2011, Judge Tomlinson issued an R&R recommending that Plaintiffs' motion for default judgment against Lend America be denied without prejudice "[i]n light of the involuntary bankruptcy and the automatic stay currently in place." (Docket No. 227.)

No party has objected to any portion of Judge Tomlinson's R&R.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Here, no party objected to Judge Tomlinson's R&R. And the Court finds Judge Tomlinson's R&R to be correct, comprehensive, well-reasoned and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

CONCLUSION

Judge Tomlinson's R&R is ADOPTED in its entirety. The motion for default judgment against Lend America is DENIED without prejudice and with leave to renew should Plaintiffs seek, and the bankruptcy court grant, relief from the stay. Plaintiffs are ORDERED to serve a copy of this Order upon Lend America and Lend America's former counsel-of-record.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 14, 2011
Central Islip, New York